



*To enhance mission performance, TSA is committed to promoting a culture founded on its values of Integrity, Innovation and Team Spirit.*

*NOTE: Pursuant to Section 101 of the Aviation and Transportation Security Act (49 U.S.C. 114(n)), this directive and all related Handbooks, Attachments, and Appendices, establish Transportation Security Administration (TSA) policy and must be applied accordingly.*

**REVISION:** This revised directive cancels and supersedes TSA MD 1100.30-15, *Citizenship Requirements*, dated July 24, 2006.

**SUMMARY OF CHANGES:** Title, changed to “*Employment of Non-Citizens*”; Section 1, Purpose, revised for clarity; Section 3, Authorities, deleted reference to the Homeland Security Act; Section 4, Definitions, deleted “*alien,*” “*excepted service,*” and “*suitability,*” and added “*fitness,*” “*fitness determination,*” and “*non-citizen*”; Section 5, Responsibilities, revised for clarity and added the responsibility for the Office of Chief Counsel; Section 6, Policy, added a statement regarding security clearance; Section 7, Procedures, deleted the exception clause covering non-TSO employees hired prior to the effective date of the directive.

**1. PURPOSE:** This directive provides TSA policy and procedures for employment of non-citizens.

**2. SCOPE:** This directive applies to all TSA organizations and TSA employees.

**3. AUTHORITIES:**

- A. The Aviation and Transportation Security Act, Pub. L. 107-71 (ATSA)
- B. Immigration and Nationality Act of 1990, as modified, 8 U.S.C. §§ 1101(a) (22), §1324a, §1401, §1408 and §1409
- C. Immigration Reform Act of 1986
- D. Executive Order (EO) 12968 – Access to Classified Information, dated August 2, 1995
- E. 8 CFR 274a

**4. DEFINITIONS:**

- A. Appropriations Act Ban: Annual, statutory ban (usually appearing in the Treasury and General Government Appropriations Act) that prohibits agencies from using appropriated funds in the continental U.S. to pay Federal employees unless they are U.S. citizens, U.S. nationals or meet one of several exceptions.

B. Citizen: An individual who was:

- (1) Born in the U.S. (the fifty states, the District of Columbia, Puerto Rico, Guam<sup>1</sup> (since 1950), or the U.S. Virgin Islands);
- (2) Born outside the U.S. and its outlying possessions<sup>2</sup>, to parents who are citizens of the U.S., one of whom was physically present in the U.S., or one of its outlying possessions, for a continuous period of one year at any time prior to the birth of the person (in some situations only one parent has to be a citizen);
- (3) Naturalized as a U.S. citizen; or
- (4) Otherwise granted citizenship under law.

C. Fitness: For the purpose of this directive, the level of character and conduct determined necessary for an individual to perform work for or on behalf of a federal agency as an employee in the excepted service (e.g., TSA) or as a contractor employee.

D. Fitness Determination: A decision by an agency that an individual has or does not have the required level of character and conduct necessary to perform work for or on behalf of a federal agency as an employee in the excepted service (e.g., TSA) or as a contractor employee. A favorable fitness determination is not a decision to appoint or contract with an individual.

E. National: An individual who is a citizen of the U.S. or who, though not a citizen of the U.S., owes permanent allegiance to the U.S.<sup>3</sup>

F. Non-Citizen: An individual who is not a citizen or national of the U.S.

G. Transportation Security Officer (TSO): A TSA employee who occupies a position within the 1802 job series.

## **5. RESPONSIBILITIES:**

A. Office of Human Capital (OHC) is responsible for:

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<sup>1</sup> Northern Mariana Islands are linked to Guam.

<sup>2</sup> Current outlying possessions are American Samoa and Swains Island which are part of the Samoa region.

<sup>3</sup> U.S. national includes a person who has lived in an outlying possession, and must meet the requirements described in 8 U.S.C. § 1408. Unless otherwise provided in 8 U.S.C. § 1401, the following shall be U.S. nationals, but not citizens at birth:

- (1) A person born in an outlying possession of the U.S. on or after the date of formal acquisition of such possession;
- (2) A person born outside the U.S. and its outlying possessions of parents both of whom are nationals, but not citizens, of the U.S., and have a residence in the U.S., or one of its outlying possessions prior to the birth of such person;
- (3) A person of unknown parentage found in an outlying possession of the U.S. while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in such outlying possession; and
- (4) A person born outside the U.S. and its outlying possessions of parents one of whom is an alien, and the other a national, but not a citizen, of the U.S., who prior to the birth of such person was physically present in the U.S. or its outlying possessions for a period or periods totaling not less than seven years in any continuous period of ten years during which the national parent was not outside the U.S. or its outlying possessions for a continuous period of more than one year, and at least five years of which were after attaining the age of fourteen years.

- (1) Verifying employment eligibility of all potential employees by requiring candidates to complete U. S. Citizenship and Immigration Services (USCIS) Form I-9, *Employment Eligibility Verification*, and checking the candidates' verification documents;
  - (2) Coordinating with managers in the recruitment and hiring process to ensure that all laws, regulations and policies are met prior to approving the appointment of a non-citizen;
  - (3) Verifying that any non-citizen being considered for employment has appropriate authorization from USCIS to work in the U.S. and meets one of the exceptions under the Appropriations Act Ban; and
  - (4) Providing final approval of an appointment of a non-citizen after thoroughly reviewing all documentation relating to the candidate to ensure all requirements for such appointment have been met.
- B. Office of Chief Counsel is responsible for providing guidance on the legal authorities for employing non-citizens.
- C. Personnel Security Section, within the Office of Law Enforcement/Federal Air Marshal Service is responsible for:
- (1) Evaluating pertinent data contained in background investigation, and/or any other available relevant reports, to determine whether a candidate is fit for Federal employment; and
  - (2) Verifying that any non-citizen being considered for a TSA position requiring access to classified information meets the criteria in E.O. 12968 for access to classified information.
- D. Selecting Officials are responsible for:
- (1) Working with OHC to develop a recruitment strategy to attract a broad range of qualified applicants and that any candidate they plan to hire is eligible to work in the U.S., in conformance with applicable laws and regulations;
  - (2) Taking sufficient steps to establish that there are no qualified citizens or nationals eligible for appointment, prior to considering a non-citizen for employment; and
  - (3) Submitting a written request to the Assistant Administrator for Human Capital (AA/OHC), through and with the approval of the employing Office's Assistant Administrator (AA), to obtain the appropriate approval prior to hiring a non-citizen.
- D. Selectees are responsible for providing the required documentation verifying their eligibility to work in the U.S.

**6. POLICY:**

- A. TSA shall hire only citizens or nationals for TSO positions.
- B. TSA will give strong priority to hiring citizens or nationals for all non-TSO positions.

- C. In the rare instance that a qualified citizen or national cannot be identified for a critical non-TSO position, a qualified non-citizen may be hired if permissible under an exception to the Treasury and General Government Appropriations Act. This Act bans using appropriated funds to pay the compensation of any officer or employee of the Government of the U.S. whose post of duty is in the continental U.S., unless that person is a citizen of the U.S. or owes allegiance to the U.S., or meets other specific criteria. Exceptions to this ban are subject to change. Selecting officials wishing to consider non-citizens must consult with the OHC before proceeding.
- D. Non-citizens cannot obtain a security clearance; however, they may be granted a Limited Access Authorization (LAA). LAAs may be granted in those rare circumstances where the non-citizen possesses unique or unusual skill or expertise that is urgently needed to support a specific U.S. Government requirement involving access to specified classified information (no higher than Secret), and a cleared or clearable citizen or national is not readily available.

## **7. PROCEDURES:**

- A. Vacancy announcements will contain a statement that applicants must be a U.S. citizen or U.S. national. Announcements will also state that an appointment is subject to verification of citizenship status and a favorably adjudicated personnel security investigation.
- B. If there are no qualified citizens or nationals for a particular position, selecting officials must follow appropriate procedures before hiring a non-citizen for a non-TSO position.
  - (1) In order to document that no citizens or nationals are qualified for a particular position, selecting officials must demonstrate that they have advertised the position to the broadest extent possible in their efforts to fill the vacancy. This may include vacancy announcements open to all qualified applicants, paid advertisements in journals, newspapers and magazines, and a history of being unable to fill similar positions despite extensive recruitment.
  - (2) When it has been established that there are no qualified citizens or nationals available for a non-TSO position and a qualified non-citizen who meets the provisions for employment as stipulated in section 6C has been identified, the selecting official must submit a written request to the AA/OHC for approval to hire a non-citizen. The request must be submitted through, and with the approval of, the AA of the employing Office.
  - (3) The written request must:
    - (a) Identify the prospective candidate's current country of citizenship;
    - (b) Describe the candidate's efforts to become a citizen;
    - (c) Identify the position for which the candidate is being considered;
    - (d) Describe the efforts made to recruit and hire a citizen or national;
    - (e) Include a justification as to why this candidate is the best qualified candidate for the vacant position; and

- (f) Include the job analysis tool/standard job description and the prospective candidate's resume.
  - (4) The AA/OHC will issue a written decision to grant or deny the request, subject to a favorable fitness determination. The decision of the AA/OHC is final.
  - (5) Prior to conveying an offer of employment, the candidate must receive a favorable fitness determination.
  - (6) Term of appointment:
    - (a) Appointments of non-citizen will be temporary and must conform to the time limits on temporary appointments. See TSA MD 1100.30-27, *Temporary (Time-Limited) External Appointment*.
    - (b) Appointments cannot exceed the period of legal employment in the U.S. granted by the USCIS.
    - (c) Appointments provide the incumbent with sick and annual leave if the appointment is for more than 90 days.
    - (d) Appointments provide the incumbent with the opportunity to be covered under health benefits and life insurance if the appointment is for more than one year.
    - (e) Appointments do not confer eligibility for permanent employment to the non-citizen.
    - (f) Appointee shall not be reassigned or promoted to another position, except in situations where a qualified citizen or national is not available for a position deemed critical. In such a situation, the procedures of the directive must be followed, including the requirement for the AA/OHC review and approval.
- C. Dual Nationality: Dual citizenship, with one country being the U.S., in and of itself, is not a bar to employment with TSA.

8. **EFFECTIVE DATE AND IMPLEMENTATION:** This policy is approved and effective the date of signature unless otherwise specified.

**APPROVAL**

*Signed*

October 19, 2016

\_\_\_\_\_  
Karen Shelton Waters  
Assistant Administrator for Human Capital

\_\_\_\_\_  
Date

**EFFECTIVE**

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Date

Distribution: Administrator, Deputy Administrator, Assistant Administrators, Regional Directors, Federal Security Directors, Supervisory Air Marshals in Charge, Business Management Division Directors, Administrative Officers, and Human Resources Specialists

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